

MARK E. COHEN, Esq.
ATTORNEY FOR SECURED CREDITOR
WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN
ITS INDIVIDUAL CAPACITY BUT SOLELY IN CAPACITY AS OWNER
TRUSTEE OF MATAWIN VENTURES TRUST SERIES 2017-4
c/o KONDAUR CAPITAL CORPORATION
108-18 QUEENS BOULEVARD
4TH FLOOR, SUITE 3
FOREST HILLS, NEW YORK 11375
TELEPHONE (718) 258-1500

CONFIRMATION HEARING: JULY 25, 2018
CONFIRMATION TIME: 9:55AM

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Case No. 18-22770-rdd

Joseph F. Aragona and
Muriel M. Aragona,

Chapter 13

Debtors.

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**OBJECTIONS TO PROPOSED
CHAPTER 13 PLAN AND CONFIRMATION THEREOF**

Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation, secured creditor in the above captioned bankruptcy proceeding, its assignees and/or successors in interest (the “*”), holds the senior lien on the subject property generally described as **79 Wrexham Road, Bronxville, New York 10708** , by and through its retained counsel, Mark E. Cohen, Esq., submits the following objections to the confirmation of the chapter 13 plan (the “Plan”) proposed by Joseph F. Aragona and Muriel M. Aragona (the “Debtors”) seeking the entry of an Order: (i) denying confirmation of the Plan; (ii) awarding Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation attorneys’ fees and costs incurred herein; (iii) dismissing the Debtors’ chapter 13 bankruptcy proceeding; and (iv) granting

such other relief as this Court may deem as just and proper, respectfully sets forth and alleges as follows:

BACKGROUND

1. On May 22, 2018 (the "Filing Date"), the Debtors filed a voluntary petition for relief in accordance with chapter 13 of title 11 of the United States Code (the "Bankruptcy Code") with this Court.
2. By Notice of Appointment dated May 22, 2018, Krista M. Preuss, Esq. was appointed interim chapter 13 trustee of the Debtor's estate and is acting in such capacity.
3. The Debtors filed their Plan on May 31, 2018.

BASIS FOR RELIEF REQUESTED

LACK OF ADEQUATE FUNDING

4. The Plan is not adequately funded. 11 U.S.C. §1325(a)(5)(B)(ii) requires full payment of the allowed claim of this objecting Secured Creditor. The arrearage amount provided for in Debtors' Chapter 13 Plan is insufficient to cure the pre-petition arrears owed to Secured Creditor. The Proof of Claim to be filed by this creditor establishes prepetition arrearages in the approximate amount of \$46,469.08, not \$0.00 as provided for in the Plan. The actual arrearage amount will be disclosed in a timely filed Proof of Claim. Accordingly, even if all payments are tendered pursuant to the Plan, they will not be sufficient to satisfy Secured Creditor's claim in full.

POST-PETITION PAYMENTS

5. The Debtors' proposed Chapter 13 Plan fails to provide the correct amount of ongoing post-petition monthly payments. The current ongoing monthly payment is \$4,743.89, which includes principal and interest in the amount of \$3,139.41 and escrow

payments in the amount of \$1,604.48. A Notice of Mortgage Payment Change was filed with the Court on June 29, 2018, which will increase the amount of the escrow payments to \$2,107.98 and total payment to \$5,247.39 beginning August 1, 2018.

LACK OF FEASIBILITY

6. Section 1325(a)(6) states that the court shall confirm a plan if the Debtor will be able to make all payments under the plan and to comply with the plan. Secured Creditor will file a Proof of Claim in the approximate amount of \$46,469.08. Debtor cannot demonstrate that he is able to make any payments under the Plan because Debtor does not have enough disposable income to cure the Secured Creditor's arrears, in addition to maintaining the regular monthly payments at the actual amount listed above. The monthly net income from Schedule I and J is \$143.32, with the monthly mortgage payment calculated at \$4,300.00. Adjusting for the correct mortgage payment amount, debtor has no disposable income to fund the plan.

CONCLUSION

7. Any chapter 13 plan proposed by the Debtors must provide for and eliminate the objections specified herein in order to be feasible and to provide adequate protection to Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation. It is respectfully requested that confirmation of the Plan as proposed by Debtor, be denied.

WHEREFORE, secured creditor, Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation respectfully requests that this Court

enter an Order: (i) denying confirmation of the Plan; (ii) awarding Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation attorneys' fees and costs incurred herein; (iii) dismissing the Debtors' chapter 13 bankruptcy proceeding; and (iv) granting such other relief as this Court may deem as just and proper.

Dated: Forest Hills, New York
July 6, 2018

MARK E. COHEN, ESQ.

By: /s/ Mark E. Cohen, Esq.

Attorney for Secured Creditor

Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation
108-18 Queens Boulevard
4th Floor, Suite 3
Forest Hills, New York 11375
Telephone (718) 258-1500
Our File No. K.052-814

CERTIFICATE OF SERVICE

I, Mark E. Cohen, Esq., certify under penalty of perjury that I am not a party to this action, am over 18 years of age.

That on July 9, 2018 I served the **OBJECTIONS TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION THEREOF** by the Court's electronic filing system and regular U.S. Mail to the addresses listed below, said addresses designated for that purpose, as follows:

TO: **Chapter 13 Debtors**: Joseph F. Aragona and Muriel M. Aragona, 79 Wrexham Road, Bronxville, NY 10708

Debtors' Counsel: Gary R. Gjertsen, Esq., Clair & Gjertsen, 4 New King Street, Suite 140, White Plains, NY 10604

Chapter 13 Trustee: Krista M. Preuss, Esq., 399 Knollwood Road, Suite 102, White Plains, NY 10603

U.S. Trustee: Office of the U.S. Trustee, Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, NY 10014

Dated: Forest Hills, New York
July 9, 2018

MARK E. COHEN, ESQ.

By: /s/ Mark E. Cohen, Esq.

Attorney for Secured Creditor

Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee of Matawin Ventures Trust Series 2017-4, c/o Kondaur Capital Corporation 108-18 Queens Boulevard 4th Floor, Suite 3 Forest Hills, New York 11375 Telephone (718) 258-1500 Our File No. K.052-814

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SOUTHERN DISTRICT OF NEW YORK

In re:

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*MARK E. COHEN, ESQ.
Attorney for Secured Creditor*

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